IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

S.T.Rev.No.47 of 2003

T.A.NO.554/1992 OF THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM
(ORDER DATED 20.2.2001)

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REVISION PETITIONER/RESPONDENT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:-

M/S.GOODLASS NEROLAC PAINTS LTD.,
ERNAKULAM.

BY ADV. SRI.ANIL D NAIR
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 10/08/2007, ALONG WITH S.T.REV.NO.59 OF 2003 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu, C.J. & K.T.Sankaran, J.

S.T.Rev.Nos.47of 2003, 59 of 2003 and 60 of 2003 & T.R.C.No.166 of 2003

Dated, this the 10th day of August, 2007

ORDER

H.L.Dattu, C.J.

The Revenue being aggrieved by the common order passed by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in T.A.Nos.553, 554, 555 and 556 of 1992 dated 20th February, 2001 is before us in these revision petitions filed under Section 41(1) of the Kerala General Sales Tax Act, 1963 ('the Act' for short).

(2) The respondent herein is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 and the Central Tax Act, 1956. It is engaged in the business of paints. In these revision petitions, we are primarily concerned with the assessment years 1984-85, 1985-86, 1986-87 and 1987-88.

(3) The assessee while filing its annual returns for the assessment years in question had claimed deductions of rebate, sales discount and sales returns of the previous year. The assessing authority has not accepted the claim so made and therefore, had issued a proposal to the assessee, proposing to disallow the claim. In the proposal so made he had stated as under:

> "Under Para II of my earlier notice I have already disallowed an amount of Rs.13,893.79 towards sales return claimed. In addition to that the following credit notes issued towards discount allowed.

Turnover rebate etc., cannot be allowed due to the reasons stated.

Credit Note No./Date	Amount	Remarks	Reasons
1. 3019/14-4-87	30,000	Turnover rebate 86-87	Pertains to previous year
2. 3024 to 3025/ 30-4-87	1,26,191	Scheme discount 3/87	"
3. 3218 to 3221/ 30-4-87	11,016	" Jan/March 87	"
4. 3507 to 3553/ 30-5-87	28,138/-	" "	"
5. 1551 to 2078/ 31-7-87	12,76,726/-	Turnove rebate 86-87	"
Total	14,72,071		

Therefore the total amount disallowed under this head and sales return is Rs.14,85,964.79".

(4) After receipt of the proposal so made, the assessee had filed its detailed objections. The objections so filed is as under:

> "An objection to the above proposal dated, 23.2.89 was filed by the assessee contending that the discount given to the dealers is eligible to be deducted from the total turnover under rule 9(a) and 8(a). It is also stated that this accounting period is Ist July to 30th June and therefore the claim of exemption is spread to two different assessment years and the discount given cannot be treated as sale etc."

(5) Taking into consideration the objections so filed by the assessee, the assessing authority has proceeded to pass the following order:

> "I have examined the objections filed by the assessee with reference to the rules relied on by the assessee. The contention that the discount is an admissible deduction is valid, but the same has to be claimed during the very same year. The discount given in a previous year cannot be carried over to the next year as contended by the assessee. The turnover subjected to tax relates to the year 87-88. Hence no deduction can be given for the discount allowed on the sales effected during 86-87."

(6) Aggrieved by the order so passed by the assessing authority for the assessment years in question, the assessee had filed appeals before the Deputy Commissioner (Appeals) in STA Nos.177 of 1989, 178 of 1989, 455 of 1989 and 91 of 1990. The appellate authority by its common order dated 4.10.1991 has rejected the assessee's appeals and while doing so has observed as under:

> "In the light of the above judicial pronouncement and considering the circumstances of the case the deductions claimed under "discount" price difference and sales return can be allowed for the corresponding year sales effected providing other conditions are satisfied. Therefore the assessing authority is directed to do so.
>
> Another claim of deduction by the appellant is that rebate given. Rebate is a bonus discount which was neither received in cash by them nor reduced the actual sale value of the goods already purchased. As it did not directly or indirectly reduce the pre-paid or pre-determined sale price and the relevant credit note made it adjustable against future purchase, it does not come in for deduction. Therefore the disallowance of claim under rebate will sustain for all the years.
>
> For the year, 1987-88 the assessing authority has made an addition of Rs.50,000/- for the reasons that (1) when the place of business was inspected on 27-7-1987 the books of accounts were not written upto-date (2) stock variation in 3 items were noticed. The advocate had contended that at the time of inspection the stock was not actually verified as it was not possible to verify within the limited time. It was also submitted that compared to the value of the stock differ the variation noticed is only negligible and hence the addition may be deleted.
>
> I have examined this point also: The non-maintenance of accounts upto-date is a reasonable ground to reject the return and the account. When the place of business was inspected on 27-7-1987 the accounts were written only upto 17-7-1987 considering the defects noticed particularly the non-maintenance of books of account up-to-date the rejection of the accounts and the estimated addition of a consolidated sum of Rs.50,000/- is not excessive or unreasonable and hence the addition will also sustain.
>
> In the circumstances, the assessing authority is directed to modify the assessments for the years, 1984-85, 1985-86,

1986-97 and 1987-88 as directed."

(7) Aggrieved by the common order so passed, the assessee had carried the matter by way of second appeal before the Sales Tax Appellate Tribunal in T.A.Nos.553, 554, 555 and 556 of 1992. The Tribunal by its order dated 20th February, 2001 has allowed the assessee's appeals. While doing so, the Tribunal has stated as under:

> "6. From the aforesaid observations of the Honourable Supreme Court it is clear that the turnover rebate or bonus discount allowed by the assessee to their retail dealers in the usual practice of the trade is an allowable deduction under Rule 9 (a) of the KGST Rules. The findings of the authorities below to the contrary have therefore to be vacated.
>
> 7. The immediate question for consideration is whether the bonus discount thus claimed by the assessee can be allowed in the year in which it was claimed. In fact the discount is granted on the basis of the performance of the dealer for the previous year. The payment is also made on the basis of credit notes drawn in favour of the dealers in the subsequent year. When the payment is made in the subsequent year on the basis of the performance during the previous year, the deduction is to be made in the year in which it is granted by the assessee. Of course in Motor Industries Company case 53 STC 48 the Supreme Court held that deduction of sales return under Rule 9 (b) (i) of the KGST Rules is to be made from the turnover in respect of goods sold in a financial year and it cannot be claimed from the turnover of the succeeding financial year. But this is applicable only in the case of sales return under Rule 9(b)(i) of the Rules, as per which Rule the sales returns are to be claimed within a period of 3 months from the date of delivery of the goods. But trade discount is a deduction allowable under Rule 9 (a) of the rules and such claim is independent of the claim under Rule 9(b)(i). In regard to the claim under Rule 9(a) there is no such restriction that it should be claimed in the same financial year. At any rate, the assessee is entitled to make the claim only when it is allowed to the dealers in the next financial year. As already noted the discount thus allowed in the next financial year is on the basis of the performance of the retail dealers during the previous year. Therefore in the facts and circumstances of this case we find that the assessee is entitled to claim the deductions in the year in which it was actually allowed. That is to say, we accept the contention of the assessee that the discounts claimed should be allowed in the year in which it was granted by the assessee."

(8) Aggrieved by the orders so passed by the Sales Tax Appellate Tribunal, the Revenue is before us in these revision petitions.

(9) The Revenue has raised the following question of law for consideration and decision by this Court. The same is as under:

> "Is not the Tribunal in error in holding that turnover rebate or bonus discount allowed by the assessee to their retail dealers is an allowable deduction under Rule 9(a) when turnover should come under the purview of Rule 9(b)(i) which specifically precludes from carrying over the next financial year?"

(10) In our opinion, after hearing the learned counsel appearing for the parties to the lis, the question of law framed by the Revenue requires to be re-framed as under:

> "Whether the sales discount and the sales rebate of the previous assessment year can be allowed by way of deductions while computing taxable turnover of the succeeding assessment year?"

(11) The question of law that we have framed for our consideration and decision requires to be answered with reference to the definitions of "sale", "taxable turnover", "year", the charging section, and the corresponding Rules framed under the Act.

> "**2. Definitions:**- In this Act, unless the context otherwise requires:
>
> xxx xxx
>
> (xxi) 'sale' with all its grammatical variations and cognatic expressions means every transfer whether in pursuance of a contract or not of the property in goods by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.
>
> (xxv) 'taxable turnover' , means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-state trade or commerce

> or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;
>
> Provided that the taxable turnover of a dealer in respect of transfer of property involved in the execution of works contract shall, from the 1st day of April, 1984, be arrived at after deducting the amounts mentioned in Section 5C.
>
> (xxx) 'Year' means the financial year"

(12) Section 5 of the Act is the charging section. Under this Section, every dealer, other than a casual trader or agent of non-resident dealer whose total turnover in a year is not less than two lakh of rupees and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay on his taxable turnover for that year in the case of goods specified in the First or Second Schedule at the rates and at the points specified against such goods in the said Schedules.

(13) Rule 9 of the Rules is relevant for the purpose of this case. Therefore, it is extracted. The same reads as under:

> **"9. Determination of taxable turnover.-** In determining the taxable turnover, the amounts specified in the following clauses shall subject to the conditions specified therein be deducted from the total turnover of the dealer:-
>
> (a) All amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice in the trade and provided also that the accounts show that the purchaser has paid only the sum originally charged less the discount."

(14) The selling price of the goods for the purpose of taxation under this Act is arrived at by including any sum charged by the seller for anything done by him in respect of those goods at the time of or before delivery to the buyer and by excluding cash discount and other amounts separately charged towards freight, delivery charges and cost of installation etc. This can be inferred by conjoint reading of the charging section and Rule 9 of t he Rules.

Alternatively, it can be said, that the cash discount or rebate allowed are permissible deductions under specified circumstances for the purpose of determining the taxable turnover of the dealer for that year. The discount and rebate allowed during the assessment year cannot be carried forward and cannot be claimed much less in the assessment of the subsequent year; in view of the provisions which we have referred earlier. Therefore, it is difficult to sustain the orders passed by the Tribunal, since the same is contrary to the statutory provisions. Accordingly, the revision petitions are allowed and the orders passed by the Tribunal are set aside and the orders passed by the assessing authority is restored.

Ordered accordingly.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

vns/DK.